

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter on the Commission's own motion,	)	
to open an investigation to ensure that	)	
<b>DIRECT ENERGY SERVICES, LLC</b> , is not switching	)	Case No. U-18121
customers' natural gas service without first receiving	)	
proper authorization.	)	
_____	)	

At the January 12, 2017 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**ORDER APPROVING SETTLEMENT**

On March 15, 2016, the Michigan Agency for Energy (MAE) received a complaint alleging an unauthorized switch of residential gas service from Consumers Energy Company to Direct Energy Services, LLC (Direct Energy). After receiving the complaint, the Staff from MAE's Compliance and Investigation Section (MAE Staff) confirmed with Direct Energy that the complainant was enrolled in Direct Energy service without proper authorization, also referred to as "slamming."

The MAE Staff requested the name of the Direct Energy agent that enrolled the complainant and a record of the agent's completed sales. On March 29, 2016, Direct Energy provided MAE Staff with a report of the agent's sales from December 2015 to March 2016. According to the report, Direct Energy reviewed 73 of the agent's 282 sales during that time period. Direct Energy reported that 20 of the reviewed sales contained suspicious activity that included: (1) agent

impersonation; (2) same voice; and (3) authorizing names not matching the name of the person on the phone. MAE Staff's response to the report resulted in Direct Energy refunding all of the complainant's charges to the account and the cancellation of service from Direct Energy. Although the complainant's account was corrected, the report provided by Direct Energy raised concerns from the MAE Staff.

Due to the concerns raised in the complaint, the Commission issued an order opening an investigation into Direct Energy's alleged slamming activities and ordered Direct Energy to file another report that: (1) detailed any violation of law or business ethics by Direct Energy, Direct Energy Business, LLC, and any agent of either company subsequent to March 2014 in connection with the provision of energy or energy-related products or services that resulted in a criminal conviction, civil judgment, or any agreement to pay a penalty, fine, or settlement; (2) detailed any resulting financial penalty or obligations stemming from any reported activity; (3) described Direct Energy's policy and process when an agent is accused of slamming a customer; (4) detailed the measures taken by Direct Energy to validate that all other sales submitted by the agent allegedly responsible for the slamming of the complainant were authorized sales; (5) included a confidentially filed section that provides a detailed customer list of all sales submitted by the agent allegedly responsible for the slamming of the complainant that includes the name, address, phone number, incumbent utility, the date contacted, and a detailed synopsis of each interaction between the customer and the agent; and (6) provided a determination from Direct Energy of whether any customer enrollment submitted by the agent allegedly responsible for the slamming of the complainant violated any Direct Energy policy, and if so, included a synopsis of each enrollment that did violate Direct Energy policy. July 22, 2016 order in this docket. (July 22 order). The

July 22 order also opened and authorized an investigation into the conduct and procedures associated with the slamming allegations.

As directed by the July 22 order, on August 18, 2016, Direct Energy filed its initial report with subsequent information related to the investigation filed on August 24, September 16, and September 20, 2016. The MAE Staff filed its response to the documents filed by Direct Energy on October 10, 2016. Following MAE Staff's filing, the parties entered into negotiations resulting in a settlement agreement.

According to the terms of the settlement agreement<sup>1</sup>, Direct Energy agrees to: (1) pay a fine of \$35,000 to be paid to the State of Michigan within 30 days of the Commission order approving the agreement; (2) continue a moratorium on door-to-door sales that began on November 1, 2016, that shall continue for 90 days following the date of the order approving this agreement; (3) submit new training materials within 45 days of the order approving this agreement with actual training of Direct Energy's Michigan agents to be completed within 90 days; (4) present MAE Staff by March 31, 2017, with technologies that enhance customer identification and consent, and secure enrollment processes; (5) implement the Whitepages process described in Attachment 1 to the settlement agreement; (6) meet monthly with the MAE Staff for a period of 12 months to discuss progress with compliance with this settlement agreement and any other related matter; (7) develop with MAE Staff a template for processing complaints; and (8) reopen this docket should the MAE State Response Division identify any reoccurrence of the unauthorized switching of any customers by Direct Energy salesperson, which may result in fines, a permanent moratorium on door-to-door sales and telemarketing, and or potential license revocation.

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<sup>1</sup> The settlement agreement containing the full and complete terms agreed upon by the parties is attached as Exhibit A.

The Commission finds that the terms of the settlement agreement are reasonable and in the public interest and should be approved.

THEREFORE, IT IS ORDERED that:

- A. The settlement agreement, attached as Exhibit A, is approved.
- B. The investigation into Direct Energy Services, LLC, is closed but this docket may be reopened to ensure compliance and enforce the terms of the settlement agreement.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at [mpscdockets@michigan.gov](mailto:mpscdockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungp1@michigan.gov](mailto:pungp1@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of January 12, 2017.

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Kavita Kale, Executive Secretary

**SETTLEMENT AGREEMENT**

On July 22, 2016, the Michigan Public Service Commission ("Commission") issued an Order (the "Order"), noting that on March 15, 2016 the Michigan Agency for Energy ("MAE") had received a complaint alleging an unauthorized switch of residential gas service from Consumers Energy Company to Direct Energy Services, LLC ("Direct Energy"). The Order required MAE, on behalf of the Commission, to conduct an investigation into the alleged unauthorized switching, to ensure that customers are not switched without the proper authorization, and to determine if any fine or penalty is recommended. It further instructed Direct Energy to file a report on information requested in the Order. On August 19, 2016, Direct Energy filed its report with the Commission. On October 17, Staff for MAE filed a response to the Commission's Order and Direct Energy's report.

MAE and the Commission Staff have met with Direct Energy, have held discussions, and exchanged information about the cause of the unauthorized switch, the role of voice over internet protocol ("VOIP") phone systems in evading Direct Energy's quality assurance measures, and about changes Direct Energy is implementing to capture VOIP enrollments and further changes it is considering to help ensure that customers are not switched without proper authorization going forward.

During the course of these meetings and discussions, the parties have reached an agreement as follows:

1. Within 30 days of the Commission order, Direct Energy shall pay a fine in the agreed to amount of \$35,000 to be paid to the State of Michigan by delivery of a check for that amount to the Commission's Executive Secretary.

2. Direct Energy and MAE/Commission Staff agree to the following moratorium on door to door sales:

a. Direct Energy has ceased door to door sales as of November 1, 2016 and will continue the moratorium for ninety (90) days following the date of the order approving this settlement. During the moratorium period, Direct Energy will work with MAE/Commission Staff to review and revise training of its door to door agents.

b. New training materials agreed upon will be finalized no later than 45 days from the order approving this settlement, so as to ensure time to implement the training.

Ninety (90) days after the order approving this settlement, and upon completion and proof to MAE/Commission Staff of implementation of training of its Michigan agents, Direct Energy may begin selling door to door again.

3. Direct Energy will present to MAE/Commission Staff, no later than March 31, 2017, technologies available which enhance customer identification, consent and secure enrollment processes. Direct Energy and MAE/Commission Staff shall meet to review the technologies' compliance with Commission regulations, tariffs, and other consumer protections. If MAE/Commission Staff and Direct Energy agree to pursue a new technology or technologies, both parties will work to ensure compliance with all applicable Michigan regulatory and legal requirements and agree on a timeline to implement any new technology.

4. Direct Energy and MAE/Commission Staff agree to implementation of the Whitepages process as described in the Attachment.
5. Direct Energy and MAE/Commission Staff will meet every month, either in-person or via conference call, to discuss progress on the settlement and for a comprehensive discussion of Direct Energy's sales and any complaints. Such meetings shall continue for 12 months from the order approving this settlement, unless parties agree to continue the monthly meeting process beyond that time.
6. In order to aid in more complete and timely communication, Direct Energy and MAE/Commission Staff will develop a standard template for providing information on complaint responses to Staff. The template will ensure that standard data are provided in response to each MAE/Commission Staff request.
7. The MAE State Response Division shall continue to monitor the situation. In the event that any reoccurrence of the unauthorized switching of any customers by Direct Energy salespersons is brought to its attention either by a customer or by the company, this docket shall be re-opened and a report filed in it. Such reoccurrence may result in additional fines, permanent moratorium on door-to-door and telemarketing, and/or potential license revocation.



8. It is the opinion of the parties that this Settlement Agreement will promote the public interest, will aid the expeditious conclusion of this case, and will minimize the time and expense which would otherwise have to be devoted to this matter by the Commission and the parties.

**Direct Energy Services, LLC**

Timothy J. Lundgren  
Digitally signed by Timothy J. Lundgren  
DN: cn=Timothy J. Lundgren, o, ou, email=tjlundgren@varumlaw.com, c=US  
Date: 2016.12.13 14:48:01 -05'00'

Dated: December 13, 2016

By: \_\_\_\_\_

Its Attorney  
Timothy J. Lundgren (P62807)  
The Victor Center, Suite 910  
201 N. Washington Sq.  
Lansing, MI 48933

**Michigan Agency for Energy**



Dated: \_\_\_\_\_

By: \_\_\_\_\_

One of Its Attorneys  
Michael J. Orris (P51232)  
Assistant Attorneys General  
Public Service Division  
7109 West Saginaw Highway  
3rd Floor Lansing, MI 48917